

U.S. Department of Justice Civil Rights Division



**OFFICE OF SPECIAL COUNSEL
FOR IMMIGRATION-RELATED
UNFAIR EMPLOYMENT PRACTICES**

What Does OSC Do?

- ◎ OSC investigates and prosecutes employment discrimination based on:
 - National origin
 - Citizenship or immigration status



Employer Hotline: 1-800-255-8155

Worker Hotline: 1-800-255-7688

Office of Special Counsel for Immigration Related Unfair
Employment Practices: www.justice.gov/crt/about/osc

Overview

- OSC History
- Types of Discrimination
- Relationship to I-9 Process
- Hot topics: E-Verify/No-Match Issues
- Resources



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Historical Overview

Immigration Reform and Control Act of 1986 (IRCA)

- Created Form I-9 process and employer sanctions
- Created OSC to Enforce Anti-Discrimination Provision
- 19% of employers started discriminating after IRCA's implementation



Practice Hypothetical

Possible Answers:

A: I must write the Permanent Resident Card on the Form I-9

B: I can use other documents for the Form I-9, but I must at least see the Permanent Resident Card

C: I can hire the worker without a Permanent Resident card (i.e. I do not need to write it on the Form I-9 or see it).

D: I do not know

Prohibited Conduct Under the INA's Anti-Discrimination Provision (8 U.S.C. 1324b)

OSC investigates and prosecutes employment discrimination based on:

- Citizenship/Immigration status discrimination
- National origin discrimination
- **Document abuse** (subset of citizenship status and national origin discrimination)
- Retaliation or Intimidation



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Title VII and 1324b

Title VII

- Race, religion, **national origin**, sex, color, retaliation
- Appx. 70,000 charges/year
- Covers entities with more than **14 employees**
- Offices throughout the US
- Formal mediation requirement

1324b

- Citizenship status, **national origin**, document abuse, retaliation
- Appx. 340 charges/year
- Covers entities with more than **3 employees**
- Offices only in Washington, DC
- No mediation requirement (although ADR always attempted)



Document Abuse

- ⦿ Employers may not, for the purpose of verifying a worker's employment eligibility:
 - Request more or different documents
 - Reject reasonably genuine-looking documents
 - Specify certain documentsbased on citizenship status or national origin
- ⦿ Employers with more than 3 workers covered



Document Abuse Examples

When completing the Form I-9:

- ⦿ Requiring non-U.S. citizens to produce a List A document but allowing U.S. citizens to produce any document(s) they choose.
- ⦿ Requiring certain U.S. citizens to produce a certificate of naturalization
- ⦿ Rejecting documents that are valid based on citizenship status or national origin



Document Abuse & Form I-9

● The Form I-9's purpose is to establish a worker's identity and work authorization

● The Form I-9 is not used to verify an employee's immigration status

The image displays two pages of the USCIS Form I-9, Employment Eligibility Verification. The top page is Section 1, Employee Information and Attestation. It includes fields for the employee's name, address, date of birth, social security number, email, and telephone number. It also contains a section for the employee to attest to their status, with checkboxes for U.S. citizen, non-citizen national, lawful permanent resident, or alien authorized to work. There are fields for Alien Registration Number/USCIS Number and Form I-94 Admission Number. A 3-D Barcode area is also present. The bottom page is the Preparer and/or Translator Certification section, which includes fields for the preparer's name, address, and signature, and a section for the employer to certify the employee's authorization to work in the U.S. The form is dated 03/08/13 and includes a page number (Page 7 of 9 and Page 8 of 9).



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Form I-9: Section 1

Employee completes
Section 1 after accepting a
job offer and by the first day
of work

 **Employment Eligibility Verification**
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 03/31/2016

▶ **START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.
ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Names Used (if any)	
Address (Street Number and Name)		Apt. Number	City or Town		State	Zip Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		E-mail Address		Telephone Number	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (See instructions)
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: _____
OR
2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____
Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee: _____ Date (mm/dd/yyyy): _____

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.)

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator: _____ Date (mm/dd/yyyy): _____

Last Name (Family Name)		First Name (Given Name)		
Address (Street Number and Name)		City or Town	State	Zip Code

STOP Employer Completes Next Page **STOP**

Form I-9 03/08/13 N Page 7 of 9



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Form I-9: Section 1 (cont.)

An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) . Some aliens may write "N/A" in this field.
(See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number:

OR

2. Form I-94 Admission Number:

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number:

Country of Issuance:

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

3-D Barcode
Do Not Write in This Space

- An employee need not show documents proving the selected status.
- Some “aliens authorized to work,” such as refugees and asylees, are authorized to work indefinitely.
- If no expiration date, the employee may write: “N/A”



Form I-9: Section 2

Employer completes Section 2 within 3 business days of the first day of work. (If job begins Monday, Section 2 must be completed by Thursday)

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title: []		Document Title: []		Document Title: []
Issuing Authority: []		Issuing Authority: []		Issuing Authority: []
Document Number: []		Document Number: []		Document Number: []
Expiration Date (if any)(mm/dd/yyyy): []		Expiration Date (if any)(mm/dd/yyyy): []		Expiration Date (if any)(mm/dd/yyyy): []
Document Title: []		<div style="border: 1px solid black; padding: 10px; text-align: center;"> <p>3-D Barcode Do Not Write in This Space</p> </div>		
Issuing Authority: []				
Document Number: []				
Expiration Date (if any)(mm/dd/yyyy): []				
Document Title: []				
Issuing Authority: []				
Document Number: []				
Expiration Date (if any)(mm/dd/yyyy): []				

- List A (Both Identity & Employment Eligibility) OR
- List B (Identity) + List C (Employment Eligibility)

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Office of Special Counsel for Immigration-Related Unfair Employment Practices: www.justice.gov/crt/about/osc

Form I-9: Section 2 (cont.)

Preventing Discrimination

- ⦿ A worker **does not** need to prove his/her immigration status
- ⦿ An employer must allow the employee to present his or her choice of documentation
- ⦿ An employer **may not ask** for specific or more documents, or reject a valid document



Practice Hypothetical

Possible Answers:

A: I must write the Permanent Resident Card on the Form I-9

B: I can use other documents for the Form I-9, but I must at least see the Permanent Resident Card

C: I can hire the worker without a Permanent Resident card (i.e. I do not need to write it on the Form I-9 or see it).

D: I do not know

- An electronic program that verifies an individual's permission to work in the U.S.
- Run by the Department of Homeland Security, in partnership with the Social Security Administration



How E-Verify Works

- An individual can only be run through E-Verify **after hire** and completion of the I-9 Form
- Employers who use E-Verify must use it for all new hires and only in certain cases are permitted by MOU to use E-Verify on current employees
- E-Verify compares the employee's I-9 Form information to information in SSA and DHS records



Proper Handling of a TNC

- A “tentative non-confirmation” (TNC) issues when the Form I-9 information doesn’t match government databases
- The employer must promptly tell an employee about a TNC
- An employee who wants to “contest” the TNC must inform the employer and sign the TNC notice
- The employer must give the employee a referral letter with instructions for resolving the TNC and the deadline for contacting DHS or SSA
- **Resolution may take longer than 8 days!!**



Proper Handling of a TNC

- ⦿ While a TNC is being resolved, the employer **may not take any adverse action**, such as:
 - Termination or suspension
 - Delaying a start date, training, etc.
 - Encouraging the employee to quit
 - Cutting work hours or withholding pay
 - Requesting additional documentation from the employee



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E-Verify: Self Check

- Service that allows an employee to check his or her information through E-Verify for free
- Employers **cannot** require or ask applicants or employees to use Self Check or to provide a Self Check print-out



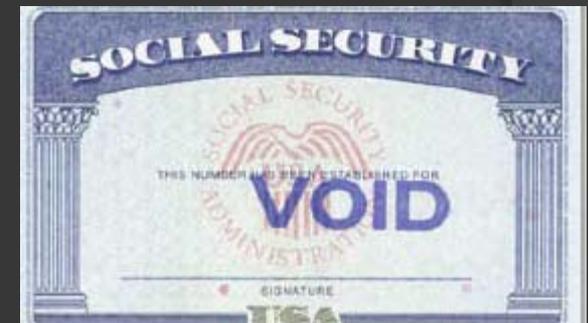
Avoiding Discrimination

- ⦿ Do not use E-Verify or Self-Check to pre-screen employees in any way
- ⦿ Follow the correct procedures for handling a TNC
- ⦿ Treat all employees the same regardless of citizenship status or national origin
- ⦿ Delay the use of E-Verify for employees who have not yet received a Social Security Number and run through E-Verify only after they receive their SSN



Social Security Number No-Match

- ⦿ A notice that the employee name and Social Security Number (SSN) submitted by employer do not match agency records
- ⦿ **No-Match notices alone say nothing about immigration status or work authorization**



Responding to SSN No-Matches

- Employers should not assume no-match notice is evidence of undocumented status or lack of work authorization
- Follow same procedures for all employees, regardless of citizenship status or national origin
- Employers should give employees a reasonable period of time to resolve any discrepancy in the employee's records
- **No-match guidance available on OSC's website**



Social Security Number Verification Service: SSNVS

- SSNVS is not a substitute for E-Verify
- May be used only for wage reporting (W-2) purposes
- **Illegal to use before hiring a worker**
- Must apply consistently to all workers



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OSC Enforcement

◎ Charge-Based

- OSC investigates charges of discrimination filed by injured parties or their representatives

◎ OSC-Initiated

- OSC has authority to open an investigation based on reasonable belief that an employer has committed a violation



Possible Outcomes of Charge

- The charge is dismissed if OSC finds no reasonable cause to believe the employer engaged in discrimination/no jurisdiction
- If OSC determines there was discrimination, settlement attempts are made before a complaint is filed in court
- If settlement fails, a complaint is filed and the matter is litigated before an Administrative Law Judge (ALJ)
- Charging Party may file own complaint



OSC Resources

- Contact OSC for printed materials or to attend a webinar
- Call **OSC's Employer hotlines** to speak with an OSC representative
- Calls can be anonymous
- Educational materials are also available on OSC's website: www.justice.gov/crt/about/osc
- Employers can email OSC at osc crt@usdoj.gov



Thank you!

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